

APPEAL NO. 021000
FILED JUNE 5, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 27, 2002. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and that she did not have disability. On appeal, the claimant urges reversal of this decision and, in support of her position, contends that the hearing officer erred in admitting several of the respondent's (carrier) exhibits; that the hearing officer misstated the evidence; and that the carrier failed to meet its burden of proving that a preexisting condition was the sole cause of the claimant's disability. The carrier urges affirmance.

DECISION

Affirmed.

EVIDENTIARY ISSUES

The claimant contends that the hearing officer's Statement of the Case inaccurately reflects the evidence. A hearing officer is not required to recite the facts since the 1989 Act only requires findings of fact, conclusions of law, whether benefits are due, and an award of benefits due. Texas Workers' Compensation Commission Appeal No. 93791, decided October 18, 1993. A statement of evidence, if made, only needs to reasonably reflect the record. The Statement of the Case section of the hearing officer's decision reasonably reflects the evidence in this case.

The claimant asserts that the hearing officer erred by admitting medical documents that were not exchanged 15 days prior to the date of the hearing. The record reflects that the hearing officer granted an extension of time to the carrier in which to provide the claimant with answers to the claimant's interrogatories. At this time, seven days prior to the hearing, in addition to the answers to the interrogatories, the carrier attached several medical documents that had not been exchanged previously. The claimant objected to these documents at the hearing. The hearing officer essentially ruled that good cause existed for the untimely exchange and admitted the documents. He also noted that the admission of the documents was necessary in order to resolve the disability issue, should it be determined that the claimant sustained a compensable injury.

In order to obtain reversal of a judgment based upon the hearing officer's abuse of discretion in the admission of evidence, an appellant must demonstrate that the evidence was actually erroneously admitted and that "the error was reasonably calculated to cause and probably did cause rendition of an improper judgment." Hernandez v. Hernandez, 611 S.W.2d 732, 737 (Tex. Civ. App.-San Antonio 1981, no writ). It has also been held that reversible error is not ordinarily shown in connection with rulings on questions of evidence unless the whole case turns on the particular evidence admitted or excluded. Atlantic Mut.

Ins. Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). In this instance, any error in the admission of the carrier's exhibits does not rise to the level of reversible error because it is apparent that the hearing officer did not consider them in determining that the claimant did not sustain a compensable injury. As a result, we cannot agree that the admission of the documents was reasonably calculated to, and probably did, cause the rendition of an improper judgment.

We will not entertain the claimant's assertion, made for the first time on appeal, that the burden of proof should have been placed upon the carrier to prove that a preexisting condition was the sole cause of the claimant's disability.

INJURY AND DISABILITY

The hearing officer's determinations that the claimant did not sustain a compensable injury and did not have disability are supported by sufficient evidence. The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence, as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**C. T. CORPORATION SYSTEMS
350 NORTH ST. PAUL STREET, SUITE 2900
DALLAS, TEXAS 75201.**

Michael B. McShane
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge